IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14633 of 2007
With
SPECIAL CIVIL APPLICATION No. 14634 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD **Sd/-**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **Yes**

2 To be referred to the Reporter or not ? **Yes**

3 Whether their Lordships wish to see the fair copy of the judgment ? **Yes**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **No**

5 Whether it is to be circulated to the civil judge ? **No**

==========

PRITHVIRAJBHAI PRAHLADBHAI CHAUDHARY - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 3 - Respondent(s)

==========

Appearance :
MR GM JOSHI for Petitioner(s) : 1,
MR MP PRAJAPATI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.
MR HUKAMSINH, AGP for Respondent(s) : 3,
MR DK CHAUDHARI for Respondent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 25/09/2007

ORAL ORDER

1. Heard learned advocate Mr. Gautam M. Joshi appearing on behalf of petitioner – Pruthvirajbhai

Prahladbhai Chaudhary and another petitioner – Ushaben Chaturbhai Patel of both the petitions respectively, Learned advocate Mr. M.P. Prajapati appearing on behalf of respondent No.1, learned AGP Mr. Hukamsinh appearing on behalf of respondent Nos.2 and 3 – State Authorities and learned advocate Mr. D.K. Chaudhari appearing on behalf of respondent No.4.

2. The brief facts of both petitions are as under :

2.1 In case of petitioner – Pruthvirajbhai Prahladbhai Chaudhary of Special Civil Application No.14633 of 2007, the petitioner was working as a Head Teacher at Dabhad Primary School at Tal. Kheralu, District Mehsana on 20th May 2004. The petitioner was married to one Revaben Chaudhary. Because of the matrimonial disputes, the petitioner executed a divorce deed as per the custom and usage of the caste of the petitioner and accordingly, he separated from Revaben Chaudhary on 20th May 2004.

2.2 Thereafter, petitioner was married to one Ushaben whose maiden name was Ushaben Chaturbhai Patel. The petitioner received a show cause notice dated 22nd July/3rd August 2004 inter alia alleging against the petitioner that petitioner has committed an offence of moral turpitude by entering into a remarriage though he was married and other allegations. On 17th August 2004, petitioner addressed his reply stating there in that he has not committed

any offence and was not guilty of any misconduct as marriage was his personal matter and he has not committed any offence by marriage, etc. On 21st September 2004, the petitioner was informed that his explanation was not accepted and he was called upon of remained present with the documents relating to the divorce given to his earlier wife Smt. Revaben on 27th September 2004 at the office of the District Primary Education Officer. The petitioner produced a copy of document dated 20th May 2004 which was registered on 30th September 2004. However, by communication dated 28th October 2004, the respondent No.1 decided to dismiss the petitioner and his present wife – Ushaben from service seeking approval of his action from respondent No.3 – Director of Primary Education. By letter dated 11th November 2004, the Joint Director of Education informed the respondent authority – District Primary Education that he was competent to take action under Section 24(1) of the Primary Education Act, 1947 and was told to take appropriate action at his length. Thereafter, without conducting any inquiry as contemplated under Rule 8 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997, the District Primary Education Officer – respondent No.1 straightway issued a final show cause notice dated 14th May 2006 calling upon the petitioner to show cause as to why he should not be dismissed from service which would entail disqualification for a future service. Then, petitioner again reiterated his defence stating that he has produced an original document of divorce dated

20th May 2004 which was secured in accordance with the custom of the caste. Not only that his earlier wife had given a statement in presence of District Primary Education Officer as well as the President of District Primary Teacher Association confirming the fact of divorce between petitioner and herself – Revaben and thereafter, getting divorce from his earlier wife. Then, petitioner remarried with Ushaben, which, according to petitioner, cannot consider to be a misconduct. On 25th September 2004, a dismissal order was passed against the petitioner as well Ushaben which disqualified the petitioner and Ushaben for future service.

2.3 The departmental appeal was preferred on 5th October 2006 as amended on 11th October 2006 and hearing of appeal was fixed on 18th October 2006. On 2nd May 2007, the members of the appellate Tribunal could not agree to the decision and there was no conformity of decision and therefore, matter was referred to Director of Primary Education under Section 79 of the Bombay Primary Education Act. The appeal was heard before the Primary Education Tribunal in presence of the members of the District Primary Education Tribunal, wherein, the erstwhile wife of the petitioner also remained present and give a statement that she was legally divorced and petitioner had made an arrangement for maintenance and permanent alimony. However, District Primary Education Tribunal confirmed the order passed by District Primary Education Officer on 2nd May 2007.

2.4 In case of petitioner – Ushaben Chaturbhai Patel of Special Civil Application No.14634 of 2007, the petitioner was working as a Teacher at Village Akhaj.

2.5 The petitioner received a letter dated 20th September 2004 informing her that she has married with Pruthvirajbhai Prahladbhai Patel, Primary Teacher of Dabhad Primary School on 13th July 2004. She was called upon to produce the documents relating to the divorce of her husband from his erstwhile wife Smt. Revaben Pruthvirajbhai Chaudhary within a period of seven days from the date of receipt of the said notice. The reply dated 5th October 2004 stating that her husband has already submitted the document on 4th October 2004. Therefore, nothing further was required to produce by the petitioner. The petitioner was informed that her explanation about the offence of moral turpitude is not accepted and she was called upon to remain present for personal hearing on 18th December 2004 by letter dated 8th December 2004. On 13th December 2004, petitioner remained present and asserted that her husband has already secured a divorce from his earlier wife and thereafter, petitioner has married to her. On 14th May 2006, the petitioner straightway was given a final show cause notice dated 14th May 2006 calling upon her to show cause as to why she should not be dismissed from service which would entail future disqualification for service.

2.6 According to present petitioner, the husband had already divorced his first wife and there was no element of misconduct involved and requested to close the chapter by letter dated 2nd June 2006. According to petitioner, without framing any formal charge or without appointing any inquiry officer and without holding any regular departmental inquiry as contemplated in Rule 8 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997, respondent No.1 passed an order dated 25th September 2006 dismissing the petitioner from service entailing disqualification from future service. The departmental appeal was preferred on 5th October 2006 amended by 11th October 2006 and appeal was fixed for hearing on 18th October 2006. The members of the Appellate Tribunal could not agree to a decision and there was no conformity of decision, therefore, matter was referred to Director of Primary Education under Section 79 of the Act.

2.7 Accordingly, the appeal was heard before Primary Education Tribunal in presence of members of District Primary Education Tribunal, wherein, erstwhile wife of the petitioner was also remained present and gave a statement that she was legally divorced and petitioner has made an arrangement for maintenance and permanent alimony. However, on 2nd May 2007, a District Primary Education Tribunal confirmed the order passed by District Primary Education Officer.

3. In both the matters, affidavit-in-reply is filed by Rameshbhai I. Patel, District Primary Education Officer, Mehsana and affidavit-in-reply on behalf of respondent No.4 is also filed. Thereafter, affidavit-in-reply to the reply of respondent No.4 is also filed by District Primary Education Officer, Mehsana.

4. Learned advocate Mr. Gautam M. Joshi appearing on behalf of both the petitioners submitted that dismissal order passed by respondent considering the serious misconduct against the petitioners under Rule 6(6) of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and petitioners were declared disqualified for future employment. Therefore, learned advocate Mr. Joshi submitted that this is not a simple termination order passed by respondents, but, this is a dismissal order based on serious misconduct alleged against both the petitioners in show cause notice and dismissal order is passed under Rule 6(6) of the Rules, 1997. He also submitted that show cause notice dated 14th May 2006 calling the explanation from the petitioners as to why the petitioners should not have to dismiss from service which disqualifies the petitioners for future employment. Therefore, he submitted that except this aforesaid show cause notice, no charge-sheet was served to petitioners. No allegations were levied against the petitioners. No departmental inquiry was conducted by the respondents. No witness was examined in the present of the petitioners. No opportunity was

given to the petitioners to cross-examine the person whose statements were recorded in absence of petitioners and relied upon by the department. No opportunity was given to the petitioners to produce the defence witness and no further statement was recorded by respondents before passing the dismissal order. Therefore, learned advocate Mr. Joshi submitted that in respect to both the petitioners, same procedure was following and both were dismissed from service under Rule 6(6) of the Rules, 1997. Therefore, he submitted that before passing the dismissal order, respondents shall have to follow the due procedure of law which includes the reasonable opportunity of hearing and compliance of principles of natural justice. He further submitted that mere form of inquiry is followed, but, in substance, there was no inquiry at all. Therefore, order of dismissal passed by respondents is contrary to the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and also contrary to the principles of natural justice.

5. Learned advocate Mr. Joshi relied upon the decision of Apex Court in case of ***Meenglas Tea Estate v. The Workmen*** reported in ***AIR 1963 SC 1719***. Learned advocate Mr. Joshi also relied upon the decision of Apex Court in case of ***Sur Enamel and Stamping Works Ltd., v. The Workmen*** reported in ***AIR 1963 SC 1914***.

6. Learned advocate Mr. M.P. Prajapati appearing on behalf of respondent No.1 submitted that both the

petitioners have committed serious misconduct and prepared a fraudulent deed of divorce, wherein, the forged signature of his wife Smt. Revaben Haribhai – respondent No.4 has been put on with a view to show that he has obtained valid divorce. He also submitted that petitioner got married with Ushaben Chaturbhai Patel by indicating in the form of marriage as invalid dated 14th July 2004. Therefore, District Primary Education Officer has rightly issued a show cause notice calling the explanation which was not found satisfactorily. Thereafter, it was directed to petitioner to remain personally present on 27th September 2004. On that day, request was made by petitioner to adjourn the matter. On 30th September 2004, petitioner has once prepared a deed of divorce with the bogus signature of his wife and got it registered before the Sub-registrar, Kheralu. The signature is not tallied with the original signature of respondent No.4. He further submitted that see the Page No.77 and Page No.81 for tallying the genuine signature of respondent No.4. The petitioner has produced so called forged document of divorce before the authority and before the Deputy District Primary Education Officer, a correct signature of Smt. Revaben Chaudhary was obtained which compared in document of divorce deed produced by the petitioner.

7. Learned advocate Mr. Prajapati also submitted that a reasonable opportunity of hearing was given to the petitioner before passing the dismissal order, petitioner was personally heard by the authority and

after considering the reply/explanation, order of punishment was rightly passed which was confirmed by Appellate Authority. He emphasis that Smt. Revaben Chaudhary has stated that she is residing in house of her husband which has been given by her husband in family partition. The earlier wife of petitioner – respondent No.4 has filed affidavit before Director of Primary Education, in which also, a genuine signature of respondent NO.4 is found.

8. In short, the submission of learned advocate Mr. Prajapati is that there is no violation of principles of natural justice and no regular departmental inquiry to be conducted is necessary. Once, the authority is satisfied that misconduct is serious one against both the petitioners, then, competent authority is entitled to pass punishment order which was rightly passed by the authority and Appellate Authority has confirmed it. Therefore, he submitted that petitions are required to be dismissed.

9. Learned AGP appearing on behalf of respondent No.2 and 3 – State Authorities supporting the decision taken by competent authority and appellate authority.

10. Learned advocate Mr. D.K. Chaudhari appearing on behalf of respondent No.4 made his submissions on merits, but, he has nothing to say in respect to violation of principles of natural justice and not following the Gujarat Panchayat Service

(Discipline and Appeal) Rules, 1997.

11. In view of the aforesaid submissions made by all the learned advocates appearing on behalf of respective parties, in these two petitions, it is not necessary to consider the merits of the matter as to whether misconduct is proved against both the petitioners or not and as to whether alleged misconduct being a serious one or not and as to whether punishment is proportionate or not. But, this Court is examining the contentions raised by learned advocate Mr. Joshi that before passing the punishment order, respondent authority shall have to follow the provisions of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and also to comply the principles of natural justice. Whether in case of both the petitioners, principles of natural justice has been followed or not and the Gujarat Panchayat Service (Discipline of Appeal) Rules, 1997 has been followed or not is to be examined by this Court ignoring the merits involved in the petitions.

12. The facts between the parties are not much in dispute. Learned advocate Mr. Prajapati also admitting that no charge-sheet was served to the petitioners. No reply was called from petitioners. Inquiry Officer was not appointed. No detailed departmental inquiry was conducted. But, after having the materials that petitioners remarried with Ushaben without giving valid divorce to earlier wife Smt. Revaben Chaudhary, that amounts to a serious

misconduct. Therefore, show cause notice was issued and after receiving the explanation, punishment order was passed. In show cause notice, the explanation was called for by respondents not against the charge/allegations, but, explanation was called for against the proposed punishment, meaning thereby that, proving the charge against the petitioners upto that stage, no opportunity at all was given to the petitioners which is necessary mandatory for compliance of the principles of natural justice.

13. The Rule 8 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997, where, procedure for imposing major penalties is prescribed. Sub Rule(1) provides that; 'No order, imposing on a member of the Panchayat Service any of the penalties specified in clauses (3) to (6) of Rule 6, shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided'. The detail procedure is prescribed under Rule 8(1) to 8(14) which are quoted as under :

> ***"8. Procedure for imposing major penalties. - (1)*** *No order, imposing on a member of the Panchayat Service any of the penalties specified in clauses (3) to (6) of rule 6, shall be passed except after a formal inquiry is held as far as may be in the manner hereinafter provided.*
>
> *(2) In case where the allegations against a member of the Panchayat Services are grave*

or are such as would entail a major punishment such as reduction in rank, compulsory retirement, removal or dismissal from service, a preliminary inquiry shall, as far as possible, be held by an officer superior to the person against whom the allegations are to be inquired into;

Provided that, if there has been an investigation or inquiry by police in the matter and a report has been received thereon, the same may be considered an equivalent to a preliminary inquiry and no further preliminary inquiry shall be necessary.

Provided further that where, however, the disciplinary authority thinks that any matter needs to be clarified further it shall refer the matter to the police for such further clarification and shall not entrust it to the departmental officers.

(3) On receipt of the report of the preliminary inquiry or the police report, the disciplinary authority shall determine -

(i)whether there is a prima facie case for a formal inquiry;

(ii)whether the member of the Panchayat Service should be prosecuted in a court of law;

(4) When an order for formal inquiry has been made, the disciplinary authority shall

frame definite charges on the basis of allegations and shall communicate such charges along with the statement of the allegations to the member of the Panchayat Service and also require him to submit within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(5) The person against whom inquiry is to be held shall for the purpose of preparing the defence, be permitted to inspect and take extracts from such records as he may specify ;

Provided that such permission may be refused if for reasons to be recorded in writing in the opinion of the inquiry officer such records are not relevant for the purpose or it is against the public interest to allow his success thereto.

(6) On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation along with all inquiry papers.

(7) The disciplinary authority may nominate any person to present the case in support of

the charges before the Enquiry Officer. A member of the Panchayat Service may present his case with the assistance of any other panchayat servant approved by the Enquiry Officer, but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(8) If the member of the panchayat service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charges shall be entitled to cross examine the witnesses, to give evidence in person, to produce documentary evidence, if any, and to have such witnesses called as he may with :

Provided that the Enquiry Officer, may, for reasons to be recorded in writing, refuse to call a witness.

(9) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefore. If in the opinion of the Enquiry Officer, the proceedings of the inquiry

establish charges different from those originally framed, he may record findings on such charges :

Provided that findings on such charges shall not be recorded unless the Panchayat Servant has admitted the facts constituting such charges or has had an opportunity of defending himself against such charges.

(10) The proceedings conducted against the person charged shall contain sufficient record of -

(i)the charges framed against such person and the statement of allegations :

(ii)the written statement of defence, if any :

(iii)the oral evidence taken in the course of the inquiry :

(iv)the documentary evidence considered in the course of the inquiry :

(v)the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be, with regard to the inquiry :

(vi)a report setting out the findings on each charge and the reasons therefore.

(11) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (10) above to the disciplinary authority without recommendation relating to the penalty to be imposed, unless the disciplinary authority

has specifically called for such recommendation. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record of the proceedings, he is of the opinion that any of the penalties specified in clauses (3) to (6) of rule 6 should be imposed, be shall -

(a) furnish to the person charged a copy of the report of the Enquiry Officer and, where the disciplinary authority is not the Enquiry Officer, a Statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer, and

(b) give a notice to the person charged stating the penalty proposed to be imposed on him and calling upon him to show-cause, within a specified time, why the proposed penalty should not be imposed on him.

(12)(a) In every case in which it is necessary to consult the Board in accordance with the rules framed in that behalf the record of the inquiry, together with the copy of the notice given under sub-clause (b) of clause (11) above and the representation made in response to such notice, if any, shall be forwarded by the disciplinary authority to the Board for its advice. On receipt of the advice, the

disciplinary authority shall consider the representation if any, made by the person charged, and the advice given by the Board and determine what penalty should be imposed on the person charged and pass appropriate orders in the case.

(b) In a case in which it is not necessary to consult the Board or the Selection Committee, the disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine what penalty, if any, should be imposed and shall pass appropriate order on the case.

(13) If the disciplinary authority, having regard to the findings, is of the opinion that any of the penalties specified in clauses (1) to (3) of rule 6 should be imposed, it shall pass appropriate order in the case subject to the condition that in every case in which it is necessary to consult the Board the record of the inquiry shall be forwarded to the Board for its advice and such advise shall be taken into consideration before passing final orders.

(14) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service who shall also be supplied with a copy of the report of the inquiry officer and where, disciplinary authority is not the Enquiry

Officer, a Statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer unless they have already been supplied to the person charges, and also a copy of the advice, if any, given by the Board.“

14. Rule 6(6) provides that 'Dismissal from service which shall ordinarily be a disqualification for future employment.

15. Therefore, Rule 8(1) suggests that if punishment of dismissal is to be imposed, then, it can be imposed after formal inquiry is held as far as may be in the manner hereinafter provided in Sub Rule(2) to (14). Undisputedly between the parties, the aforesaid procedure was not followed which is a mandatory, which requires to be followed, otherwise, it amounts to deny a reasonable opportunity of hearing to the petitioners which violates the basic principles of natural justice.

16. That aspect has been considered by the Hon'ble Apex Court in case of in case of ***Meenglas Tea Estate v. The Workmen*** reported in ***AIR 1963 SC 1719***. The relevant Para 4 is quoted as under :

“4. The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural

justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statements made by any witness tendered in evidence. The enquiry such as it was, made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine then and indeed they drew upon their own knowledge of the incident and instead

cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workmen de novo before it.“

17. The Hon'ble Apex Court has also considered that aspect in another decision in case of ***Sur Enamel and Stamping Works Ltd., v. The Workmen*** reported in ***AIR 1963 SC 1914***. The relevant Para 4 is quoted as under :

“4. In support of the appeal against this order Mr. Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were confronted with the reports of the supervisor and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the enquiring authority they were "unable to explain as to why these persons would be

making the reports against them falsely". In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry. It has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquires held In accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined - ordinarily in the presence of the employee -- in respect of the charges. (iii) the employee is given a fair opportunity to cross examine witnesses, (iv) he is given a fair opportunity to examine witnesses secluding himself in his defence if he so wishes on any relevant

matter, and (v) the enquiry officer reorders his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross examination but it would appear that they were not present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity so cross examine them, it would have been difficult to say in these circumstances that that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the domestic Tribunal.“

18. The Division Bench of this Hon'ble Court has also considered the said aspect, considering the aforesaid two decisions of Apex Court and other decisions of Apex Court, in case of ***Gujarat State Road Transport Corporation v. Chandulal G. Rasadiya*** reported in ***1993 (1) GLR 442***. The relevant Para 13 and 14 are quoted as under :

“13. Mr. Rathod, learned advocate for the respondent, for this purpose rightly relied upon the decision of the Supreme Court in the case of S.E. & Stamping Works Ltd., v. Workmen, AIR 1963 SC 1914. In that case, the Court was required to consider a situation where there were no rules framed before termination of the employees' services and the employees' services were terminated by the Company for causing willful insubordination or disobedience whether alone or in combination with another or others, of many orders of the superior or of the management. The enquiring authority arrived at the conclusion that workmen were unable to explain as to why these persons (other person who were examined by the management) would be making the reports against them falsely. Thereafter the services of the employees were terminated. In that context, it was observed that it has been laid down by the Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the Industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. Thereafter, the Court pertinently observed that some employees have misunderstood the decisions of the Court to mean that the mere form of an enquiry would satisfy the

requirements of Industrial Law and the Court held as under :

> *"An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report."*

Same principle has been reiterated in the case of Meenglas Tea Estate v. The Workmen, AIR 1963 SC 1719, wherein, it is held as under :

> *"It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross- examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted."*

In the case of U.P. Warehousing Corpn. v. Vijay Narayan, AIR 1980 SC 840, also the Court has held as under :

> *"The rules of natural justice in the circumstances of the case, required that the respondent should be given a*

reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment."

14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned Advocate for the petitioner that in these cases, the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent-Conductors. In both the petitions, the Conductors' names are removed from the waiting list on the alleged ground of misappropriation of bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates, the Conductors had not issued the tickets after recovering fare and on such other grounds. In both the cases, the Conductors have denied the allegations made against them. Inspite of this, the petitioner has not held any further inquiry. As both the Conductors have denied the allegations made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross-examination if they desired. They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the

barest requirement of holding an inquiry in this type of grave misconduct. In the present cases, Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then in that case, further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference.“

19. In view of aforesaid observations made by Apex Court and same are relied by Division Bench of this Hon'ble Court and considering the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 r/w. Rule 8(1) to 8(14) and Rule 6(6), according to my opinion, whatever form and nature of procedure was followed by respondents before passing the dismissal order, in fact, it is not a departmental inquiry conducted by respondents against the petitioners. The respondents have merely adopted a procedure which amounts to empty formalities because there is no purpose behind to have this kind of procedure before passing the dismissal order. Straightway issuing show cause notice coming to conclusion that misconduct is proved without holding departmental inquiry which amounts to denying a reasonable opportunity of hearing to the petitioners which violates basic principles of natural justice and form of inquiry as disclosed by Apex Court in aforesaid two decision, that detailed inquiry is necessary in such a serious misconduct which alleged against the petitioners and procedure which was adopted by respondents is

contrary to the principles of natural justice and also contrary to the provisions of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and also contrary to the decisions of Apex Court as well as decision of Division Bench of this Hon'ble Court.

20. Therefore, according to my opinion, the orders of dismissal which has been passed by District Primary Education Officer and confirmed by Director of Primary Education are required to be set aside only on the ground that before passing the aforesaid order of dismissal, no detailed departmental inquiry was conducted against both the petitioners by the respondents. Therefore, order of dismissal is passed violating the basic principles of natural justice, therefore, same is required to be set aside.

21. This Court is not examining the merits in respect to the misconduct alleged against both the petitioners, but, only on the aforesaid grounds, orders of dismissal are set aside.

22. The result of setting aside the dismissal order, it is open for the respondents – authorities to hold fresh departmental inquiry against both the petitioners in accordance with the provisions of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and in accordance with the principles of natural justice as decided by the Apex Court as referred above and respondents shall have to

reinstate both the petitioners in service and both the petitioners will remain under suspension pending inquiry and respondents shall have to complete the fresh departmental inquiry as early as possible within a period of six months from the date of receiving the copy of the said order and respondents shall have to reinstate both the petitioners in service within a period of 15 days from the date of receiving the copy of the said order subject to result of fresh inquiry and after the reinstatement, immediately, both the petitioners remained under suspension entitled the suspension allowance according to the provisions of the Gujarat Panchayat Service (Discipline and Appeal) Rules 1997 till the upshot/result of such departmental inquiry declared by the respondents.

23. It is directed to both the petitioners and respondent No.4 to co-operate in departmental inquiry and not to take unnecessary adjournment during the inquiry and give full co-operation to complete the departmental inquiry as directed by this Court.

24. The interim period from the date of dismissal till the reinstatement as ordered by this Court remained undecided depend upon the upshot/result of fresh departmental inquiry and respondent authority shall have to pass appropriate orders at the end of departmental inquiry as to whether petitioners are entitled the wages of aforesaid interim period or not. At this stage, this

Court has not granted any amount of wages for interim period because this Court is keeping open the right of respondents to hold or conduct a fresh departmental inquiry against both the petitioners.

25. Accordingly, both the petitions are allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

Sd/-

[H.K. RATHOD, J.]

#Dave